

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SUSAN R. MAGBY Claimant)	
VS.)	
WESTERN TEMPORARY SERVICES, INC.)	Docket Nos. 183,397, 183,398
LAWYERS TITLE INSURANCE CORP.)	& 183,983
TWENTY FIRST PUMP SERVICE)	
Respondents)	
AND)	
TRAVELERS INSURANCE COMPANY)	
HOME INSURANCE COMPANY)	
UNITED STATES FIDELITY & GUARANTY CO.)	
Insurance Carriers)	

ORDER

ON the 22nd day of February, 1994, the application of the respondent, Twenty First Pump Service, and its insurance carrier, United States Fidelity & Guaranty Company, for review by the Workers Compensation Appeals Board of a Preliminary Hearing Order entered by Administrative Law Judge Shannon S. Krysl on January 14, 1994, came on for oral argument by telephone conference.

APPEARANCES

The claimant appeared by her attorney, Joseph Bribiesca, of Wichita, Kansas. The respondent, Western Temporary Services, and its insurance carrier, Travelers Insurance Company, appeared by their attorney, William L. Townsley III, of Wichita, Kansas. The respondent, Lawyers Title Insurance Company, and its insurance carrier, Home Insurance Company, appeared by their attorney, Edward D. Heath, Jr., of Wichita, Kansas. The respondent, Twenty First Pump Service, and its insurance carrier, United States Fidelity & Guaranty Company, appeared by their attorney, Kim R. Martens, of Wichita, Kansas.

There were no other appearances.

RECORD

The record considered by the Appeals Board included the transcript of the preliminary hearing proceedings of January 13, 1994, and exhibits introduced at that hearing, as well as the pleadings filed of record in this case.

ISSUES

Respondent Twenty First Pump Service contends that the Administrative Law Judge exceeded her jurisdiction by awarding medical benefits to be paid twenty-five percent (25%) by respondent Twenty First Pump Service, twenty-five percent (25%) by respondent Western Temporary Services, and fifty percent (50%) by respondent Lawyers Title Insurance Corporation. Specifically, Twenty First Pump Service raises the following issues:

- (1) Whether claimant suffered accidental injury arising out of and in the course of her employment;
- (2) Whether notice was given, and, if not, whether respondent was prejudiced by such lack of notice;
- (3) Whether timely written claim was made;
- (4) Whether subsequent intervening superseding compensable work injuries cut off causation for her current complaints and need for treatment; and
- (5) Whether the Administrative Law Judge's order apportioning liability between carriers is in contravention of previous interlocutory orders issued by the Benefit Review Officer.

Western Temporary Services, Inc. raises the same issues. Lawyers Title Insurance Corporation does not appeal from the January 14, 1994, Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant was employed by Twenty First Pump Service from March 30, 1992, through October 2, 1992. Her job duties included waiting on customers, answering the phone, checking in water pumps and occasionally she was required to carry water pumps out to people's cars. The weights of the water pumps varied between 20 and 40 pounds. She was not required to carry water pumps on a daily basis. The most she would carry on a given day would be three or four. While employed with Twenty First Pump Service claimant does not recall any specific accident or traumatic event but alleges aggravation of preexisting conditions. Her supervisor was aware of the preexisting conditions and ongoing symptoms. However, claimant admits that she never reported a work related injury to her supervisor nor described her symptoms as being work related. Claimant and

respondent, Twenty First Pump Service, stipulate that written claim was made upon Twenty First Pump Service more than 200 days but less than one year from claimant's last date of work.

Claimant was employed by Western Temporary Services from October 24, 1992, through January 15, 1993, as a secretary/word processor. The claimant was assigned to work for Lawyers Title Insurance Corporation by Western Temporary Services. However, she was an employee of Western Temporary Services during this time period. Claimant alleges aggravation of her preexisting conditions and symptoms due to her job duties with this respondent. She admits not having given notice to her supervisor or anyone else employed by Western Temporary Services of any work related injury occurring during the course of her employment. Written claim for compensation was first received by Western Temporary Services on August 23, 1993, which is more than 200 days but less than one year from her last date of employment with respondent, Western Temporary Services.

There is absent in the record any evidence that respondent, Western Temporary Services, had any actual knowledge that claimant suffered accidental injury arising out of and in the course of her employment. Claimant testified she notified the manager of Lawyers Title Insurance Corporation concerning her condition. However, there is no evidence that Mr. Otto was an employee of Western Temporary Services or an agent of Western Temporary Services for purposes of receiving such notice of accident.

Claimant concedes that written claim for compensation was not served upon respondents, Twenty First Pump Service and Western Temporary Services, within 200 days after the date of accident as required by K.S.A. 44-520a. However, it is claimant's contention that her time for filing written claim was extended from 200 days to one year due to the respondents' failure to file a report of accident with the Director.

K.S.A. 44-557(c) provides:

"No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where a report of the accident has not been filed, must be commenced by filing an application with the director within one year from the date of accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto." (Emphasis added.)

There is no allegation that either Twenty First Pump Service or Western Temporary Services paid disability compensation or authorized medical treatment to the claimant. As we have stated, there is no evidence of notice to Western Temporary Services. While there was knowledge of symptoms on the part of the claimant's supervisor at Twenty First Pump Service, it does not appear that there was knowledge of accidental injury arising out of and in the course of her employment with Twenty First Pump Service. In the absence

of notice of accident as provided by K.S.A. 44-520, claimant's reliance upon K.S.A. 44-557(c) to extend her time for filing written claim does not appear to be well-founded.

The January 14, 1994, Order by Administrative Law Judge Shannon S. Krysl provides "[t]imely written claim issues under advisement." The Administrative Law Judge exceeded her jurisdiction by ordering respondents, Twenty First Pump Service and Western Temporary Services, to pay compensation and provide medical treatment without first deciding the disputed threshold issue of whether written claim was timely made.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Order of Administrative Law Judge Shannon S. Krysl is reversed and remanded for a determination on the issue of whether timely written claim was made upon respondents, Western Temporary Services and Twenty First Pump Service.

IT IS SO ORDERED.

Dated this _____ day of May, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Shannon S. Krysl, Administrative Law Judge
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